

Senate Bill No. 1278

CHAPTER 542

An act to amend Section 4425 of, and to repeal Section 4427 of, the Business and Professions Code, and to amend Sections 130400, 130401, 130403, 130404, 130406, 130407, 130408, and 130409 of, and to add Sections 130401.1, 130406.5, 130407.5, and 130410 to, the Health and Safety Code, relating to pharmacies, and making an appropriation therefor.

[Approved by Governor September 13, 2002. Filed
with Secretary of State September 15, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1278, Speier. Pharmacies: prescription benefits: Medicare beneficiaries.

(1) Existing law provides for the Medi-Cal program, administered by the State Department of Health Services, under which qualified low-income persons are provided with health care services, including prescription benefits. Under existing law, the department pays participating pharmacists a discounted price for drugs on the Medi-Cal drug formulary. Existing law, the Pharmacy Law, separately regulates the operation of pharmacies and makes the violation of its provisions a crime.

The Pharmacy Law requires until January 1, 2003, as a condition of Medi-Cal eligibility, that pharmacies charge Medicare beneficiaries a price not to exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount to cover electronic transmission charges by Medicare beneficiaries, upon showing their Medicare card and prescription.

This bill would indefinitely extend these provisions and would specify that they do not apply to a prescription covered by insurance. The bill would require the department to conduct an outreach program to inform Medicare beneficiaries of this program and require participating pharmacists to prominently display a sign pertaining to its provisions. By imposing this requirement on a pharmacist and by extending the provisions of this program, the violation of which is punishable as a criminal offense, the bill would impose a state-mandated local program.

(2) Existing law, the Golden Bear State Pharmacy Assistance Program (the program), provides that in addition to receiving a discounted rate for prescription medicines under the Pharmacy Law, a Medicare beneficiary may participate in the program as well. Under the



program, the State Department of Health Services is required to negotiate rebate amounts with drug manufacturers for prescription drugs purchased by Medicare beneficiaries. Under the program, a drug manufacturer is required to pay the department the negotiated rebate amount for a prescription drug provided to a Medicare beneficiary participating in the program. Existing law requires the department to deposit the rebates into the Golden Bear State Pharmacy Assistance Program Rebate Fund (the fund), which is continuously appropriated.

This bill would authorize the department to establish a system that allows a Medicare beneficiary access to programs operated by drug manufacturers providing a larger discount amount on prescription drugs. The bill would also authorize the department to collect prospective rebates from drug manufacturers, which would be deposited into the fund. Because the bill would increase the amount of revenue in a continuously appropriated fund, it would make an appropriation. The bill would require the department to negotiate a separate fee in an amount required to administer each pharmacy claim reimbursement submitted to the department under the program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 4425 of the Business and Professions Code is amended to read:

4425. (a) As a condition for the participation of a pharmacy in the Medi-Cal program pursuant to Chapter 7 (commencing with Section 14000) of Division 9 of the Welfare and Institutions Code, the pharmacy, upon presentation of a valid prescription for the patient and the patient's Medicare card, shall charge Medicare beneficiaries a price that does not exceed the Medi-Cal reimbursement rate for prescription medicines, and an amount, as set by the State Department of Health Services to cover electronic transmission charges. However, Medicare beneficiaries shall not be allowed to use the Medi-Cal reimbursement rate for over-the-counter medications or compounded prescriptions.

(b) The State Department of Health Services shall provide a mechanism to calculate and transmit the price to the pharmacy, but shall



not apply the Medi-Cal drug utilization review process for purposes of this section.

(c) The State Department of Health Services shall monitor pharmacy participation with the requirements of subdivision (a).

(d) The State Department of Health Services shall conduct an outreach program to inform Medicare beneficiaries of their right to participate in the program described in subdivision (a), including, but not limited to, the following:

(1) Including on its Internet Web site the Medi-Cal reimbursement rate for, at minimum, 200 of the most commonly prescribed medicines and updating this information monthly.

(2) Providing a sign to participating pharmacies that the pharmacies shall prominently display at the point of service and at the point of sale, reminding the Medicare beneficiaries to ask that the charge for their prescription be the same amount as the Medi-Cal reimbursement rate and providing the department's telephone number, e-mail address, and Internet Web site address to access information about the program.

(e) If prescription drugs are added to the scope of benefits available under the federal Medicare program, the Senate Office of Research shall report that fact to the appropriate committees of the Legislature. It is the intent of the Legislature to evaluate the need to continue the implementation of this article under those circumstances.

(f) This section shall not apply to a prescription that is covered by insurance.

SEC. 2. Section 4427 of the Business and Professions Code is repealed.

SEC. 3. Section 130400 of the Health and Safety Code is amended to read:

130400. (a) This division shall be known, and may be cited as, the Golden Bear State Pharmacy Assistance Program.

(b) As used in this division:

(1) "Department" means the State Department of Health Services.

(2) "Fund" means the Golden Bear State Pharmacy Assistance Program Rebate Fund.

(3) "Medicare beneficiary" means a Medicare beneficiary who is a California resident.

SEC. 4. Section 130401 of the Health and Safety Code is amended to read:

130401. (a) In addition to participating in the program provided for under Article 24 (commencing with Section 4425) of Chapter 9 of Division 2 of the Business and Professions Code, any Medicare beneficiary may participate in the program provided for under this division.



(b) The department shall conduct an outreach program to inform Medicare beneficiaries of their right to participate in this program. Medicare beneficiaries shall be informed of the method by which the prescription drug discount is determined and that the discount shall periodically fluctuate. No outreach material shall contain a likeness of an elected state official.

(c) In order to participate in the program provided for under this division, a Medicare beneficiary shall be required to register on a one-time basis. Registration may be made at any pharmacy participating in this program. In order to register for the program, the Medicare beneficiary shall pay to the pharmacy an administrative fee, which the pharmacy shall retain, in an amount to be established by the department. Upon payment of this fee, the pharmacy shall issue a program registration card, which shall be prepared and provided to the pharmacy by the department, to the Medicare beneficiary.

SEC. 5. Section 130401.1 is added to the Health and Safety Code, to read:

130401.1. (a) The department may accept on behalf of the state any gift, bequest, or donation of outreach services or materials to inform eligible Medicare beneficiaries of their right to participate in this program. Neither Section 11005 of the Government Code nor any other law requiring approval by a state officer of a gift, bequest, or donation shall apply to these gifts, bequests, or donations. For purposes of this section, outreach services may include, but not be limited to, coordinating and implementing outreach efforts and plans, and outreach materials may include, but not be limited to, brochures, pamphlets, fliers, posters, advertisements, and other promotional items.

(b) An advertisement provided as a gift, bequest, or donation pursuant to this section shall be exempt from the provisions of Article 5 (commencing with Section 11080) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 130403 of the Health and Safety Code is amended to read:

130403. (a) The department shall attempt to negotiate rebate amounts with drug manufacturers for all prescription drugs purchased by Medicare beneficiaries. As part of these agreements, the department shall negotiate a separate fee in an amount required to administer each pharmacy claim reimbursement submitted to the department pursuant to Section 130405.

(b) If the department determines that it is unable to negotiate rebates with a sufficient number of drug manufacturers, it may cease to continue the implementation or operation of this division.



SEC. 7. Section 130404 of the Health and Safety Code is amended to read:

130404. (a) With respect to any prescription drug for which a rebate amount has been negotiated pursuant to Section 130403, upon presentation of a program registration card issued pursuant to Section 130401, a participating pharmacy shall charge Medicare beneficiaries a price for a prescription drug that does not exceed the following computed price:

(1) The Medi-Cal reimbursement rate for the prescription drug, and an amount, as set by the department, to cover electronic transmission charges.

(2) The amount ascertained pursuant to paragraph (1) shall be reduced by the rebate amount negotiated by the department pursuant to Section 130403.

(b) The pharmacy shall request, and the department shall provide, through electronic means, the price to be charged pursuant to this section.

(c) This division shall not apply to any prescription that is covered by insurance.

SEC. 8. Section 130406 of the Health and Safety Code is amended to read:

130406. (a) The department may collect prospective rebates from drug manufacturers for payment to pharmacies pursuant to Section 130405.

(b) The department shall notify a drug manufacturer of all instances in which it has paid a rebate amount pursuant to Section 130405 with respect to one of the manufacturer's drugs.

(c) A drug manufacturer shall pay the department the amount of any rebate of which the drug manufacturer is notified pursuant to subdivision (b) that exceeds the amount collected by the department pursuant to subdivision (a).

SEC. 9. Section 130406.5 is added to the Health and Safety Code, to read:

130406.5. (a) As part of the program provided in this division, the department may establish a system to provide a Medicare beneficiary access to a drug discount program operated by a drug manufacturer that would provide greater prescription drug discounts than are otherwise available through the program provided in this division. The program registration card issued pursuant to Section 130401 shall serve as the single point of entry to the private drug discount programs of participating manufacturers.

(b) To establish the system described in subdivision (a), the department may negotiate a contract with a drug manufacturer that

operates a prescription drug discount program. To assist in these negotiations, the department may contract with a public or private entity.

(c) (1) A Medicare beneficiary shall not in any circumstance be required to participate in, or to disclose information that would determine his or her eligibility to participate in, these private drug discount programs in order to participate in the program provided in this division.

(2) Notwithstanding paragraph (1), a Medicare beneficiary may voluntarily disclose or provide information that may be necessary to determine eligibility for participation in a private drug discount program.

SEC. 10. Section 130407 of the Health and Safety Code is amended to read:

130407. (a) The department shall deposit all payments received pursuant to Sections 130406 and 130410 into the Golden Bear State Pharmacy Assistance Program Rebate Fund, which is hereby created in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, the fund is hereby continuously appropriated to the department without regard to fiscal years for the purpose of paying rebates pursuant to Section 130405 and for defraying the costs of administering this division. Notwithstanding any other law, no money in the fund is available for expenditure for any other purpose or for loaning or transferring to any other fund, including the General Fund.

SEC. 11. Section 130407.5 is added to the Health and Safety Code, to read:

130407.5. The department shall repay the General Fund the loan in the amount of one million dollars (\$1,000,000), which was appropriated to the department for startup costs associated with the program provided in this division.

SEC. 12. Section 130408 of the Health and Safety Code is amended to read:

130408. The department shall develop a program to prevent the occurrence of fraud under this division. An individual or entity that violates any provision of the fraud prevention program may be precluded from participating in the Golden Bear State Pharmacy Assistance Program. The department shall adopt regulations setting forth a procedure for precluding participation in the program on this basis.

SEC. 13. Section 130409 of the Health and Safety Code is amended to read:

130409. The department may hire any staff needed for the implementation of this division. The department may also use the contract with the Medi-Cal fiscal intermediary or contract with another



public or private entity to implement or administer the program and to enroll Medicare beneficiaries who are eligible to participate in the program, to collect rebates, and to pay claims, only if services provided under this program are specifically identified and reimbursed in a manner that does not claim federal financial reimbursement. For purposes of this division, use of the Medi-Cal program fiscal intermediary shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. This division shall not be implemented unless and until the director executes a declaration, which shall be retained by the director, stating that all federal approvals necessary for implementation of this division have been received.

SEC. 14. Section 130410 is added to the Health and Safety Code, to read:

130410. A contract executed for the purposes of this division is exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

